

Memorandum

To : File

Date : April 22, 1985

M-85-092

From : **FAIR POLITICAL PRACTICES COMMISSION**

Kathy Donovan *Ked*

Subject : Advice to Ed Moore, City Attorney of Santa Clara Regarding
Decision to Buy Marriott's Great America Amusement Park

On April 12, 1985, I had several telephone conversations with Ed Moore, City Attorney of Santa Clara, regarding disqualification of members of the Santa Clara City Council/Redevelopment Agency from participating in the decision to acquire the Great America Amusement Park from Marriott.

Mr. Moore set forth the following facts: The Redevelopment Agency for the City of Santa Clara has been negotiating the purchase of Great America from Marriott since January 1984. The decision to acquire Great America had been made, and in July 1984, the City was soliciting bids for an amusement park operator to operate the park on behalf of the City. However, a developer filed suit challenging the decision on procedural grounds (not based on the PRA), and the court held the decision invalid in November 1984. Since November 1984, the City has been trying to negotiate a settlement with the developer. It is my understanding that a settlement was recently proposed, and the decision before the City Council/Redevelopment Agency at an emergency meeting scheduled for that evening (April 12) was whether to accept the terms of the settlement. Acceptance of the terms of the settlement would permit the City to acquire Great America.

Marriott currently owns Great America, but a different company, Kings Entertainment, is the operator of the park at this time. Pursuant to a contract with the City, if the City acquires Great America, Kings would lease Great America from the City, and operate the park on behalf of the City. Kings was selected through a competitive bidding process in July 1984.

The members of the Santa Clara City Council have received benefits from Marriott and Kings which could affect their ability to participate in the decision to approve the settlement agreement. The receipt of these benefits also brings into question the legality of past actions of the City Councilmembers in connection with the decision to acquire Great America and the

decision to award the lease and operating contract to Kings, but I informed Mr. Moore that I could not give him any advice about these past actions.

Each member of the City Council has received a "silver pass" to Great America. The silver pass entitles the recipient to unlimited free admission to Great America for himself and five other persons. The recipient of the pass is required to accompany his guests while at the park. When Marriott was operating the park, the passes were a gift from Marriott. The Councilmembers received the last passes from Marriott in March 1984. Approximately two weeks ago, in late March or early April 1985, each Councilmember received a silver pass to Great America from Kings, the current operator of the park.

Neither Marriott nor Kings sells or has ever sold the silver pass to the public. According to an article in the San Jose Mercury News, the Councilmembers varied in their valuation of the passes on their SEIs. Some Councilmembers valued the pass at \$500, some at \$300, some at less than \$250, and some did not report the pass at all. According to a Councilmember who valued her pass at \$300, she reported that value based on her actual use of the pass. Admission to Great America seems to be about \$10-15 per person. I have been informed that it is possible to purchase a season pass to Great America for \$25. The season pass entitles the purchaser to unlimited free admission to the park during spring and summer, the only times the park is open.

Two or three Councilmembers also received gifts of travel, food, and lodging from Kings Entertainment. While the competitive bidding for the lease and operation of Great America was in progress, the City contacted the various bidders and suggested that it would be helpful for members of the selection committee to visit amusement park facilities operated by the bidders. Kings agreed to provide transportation, food, and lodging to persons selected by the City who wished to inspect an amusement park operated by Kings. One or two members of the City Council traveled to Cincinnati, Ohio, at Kings' expense, and one member of the City Council received a trip to Richmond, Virginia, which was paid for by Kings. The purpose of the trips was to visit amusement parks operated by Kings. These trips occurred in July 1984. The cost of the transportation, food, and lodging provided to each Councilmember was more than \$250.

I informed Mr. Moore that if the City Councilmembers have received gifts totaling \$250 or more from a single donor within 12 months prior to a decision, they are prohibited from participating in that decision if the decision would have a

reasonably foreseeable material financial effect on the donor. The City would purchase the park from Marriott from \$93.5 million; therefore, the effect of the decision on Marriott is clearly material. I do not have any figures concerning the amount of money at stake for Kings, however, judging from the vigorous arguments made to me by a representative of Kings when we were discussing the possibility of disqualification, I believe the effect on Kings is also likely to be material.

With regard to the gifts of the silver passes, I explained to Mr. Moore that the passes from Marriott which were received in March 1984, more than 12 months ago, do not require any of the Councilmembers to disqualify themselves as to the current decision about the settlement. I also explained that, because the silver passes from Kings were received less than 30 days ago, the Councilmembers would be able to participate in the decision about the settlement if they returned the passes, unused, to Kings prior to the time of the decision, and within 30 days of receipt of the passes.

I have been informed that all Councilmembers have returned the silver passes to Kings. However, one Councilmember had already used his pass prior to returning it to Kings. I informed Mr. Moore that, because the Councilmember had returned the pass within 30 days of receipt of the pass, we would consider the value of the gift the Councilmember had received to be the value of the actual use. In this case, the actual use was approximately \$60. Accordingly, no member of the City Council would be disqualified from participating in the decision about the settlement due to the silver passes from Marriott or Kings.

With regard to gifts of transportation, food, and lodging given to Councilmembers by Kings, I explained the four criteria set forth in the Stone Opinion. I stated that, based on the facts provided, it seemed that the first three criteria in Stone were met, but the City would have to produce a resolution of the City Council or Redevelopment Agency from the time of the trips, or a written record from that same time period by the City employee who arranged for the inspection of the amusement parks, which indicates that those actually were the facts. If the Stone criteria are met, then the gift is considered a gift to the City rather than to the public officials, and disqualification would not be required of the officials who received the gifts. However, if the Stone criteria are not met, then the officials who received the transportation, food, and lodging would be prohibited from participating in the decision about the settlement.

File
April 22, 1985
Page 4

I emphasized to Mr. Moore that I could not determine whether any of the Councilmembers were required to disqualify themselves from the decision about the settlement because he was unable to provide me with the facts I needed to apply the Stone Opinion. I also stated that any advice I provided did not relate to possible violations of the Political Reform Act that had already occurred.

The newspapers report that on Friday, April 12, the City Council endorsed the agreement to purchase Great America from Marriott, but delayed action on decisions affecting Kings until the public officials could determine whether they could participate in the decisions.

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